LEGISLATION AND PUBLIC EDUCATION COMMITTEE

BILL ANALYSIS

| Board | Author | Bill Number |
|---|---|---|
| California Integrated Waste Management Board | Cunneen | AB 2067 |
| Sponsor | Related Bills | Date Amended |
| Waste Management, Inc., Safety-Kleen, Evergreen Environmental Services and Romic Environmental Technologies Corporation | AB 705 (Strom-Martin)<br>AB 2605 (Bowen)<br>AB 2805 (Assembly Committee on Televising the Assembly and Information Technology)<br>SB 1824 (Calderon)<br>SB 2014 (Schiff) | May 7, 1998 |

**BILL SUMMARY**

AB 2067 is actually two bills in one --one part deals with hazardous waste control laws and the other part deals with State agency procurement of recycled materials.

HAZARDOUS WASTE LAW

AB 2067 would amend the hazardous waste control laws to define recycling, allow electronic manifesting of wastes, allow loading and unloading operations at certain facilities, modify land disposal standards, clarify the definition of used oil and allow for the mixing of used and fuel oils, and exempt from manifest fees those manifests used for shipping hazardous wastes created by the use of clean air solvents, as defined.

STATE AGENCY PROCUREMENT LAW

AB 2067 would reenact provisions of law that sunsetted on January 1, 1997, which required all State agencies to purchase recycled fluid, paint, and solvent if they meet quality and cost considerations. The bill would include building and construction materials, outdoor furniture, and landscaping materials within the definition of recycled products for purposes of procurement requirements.

| Departments That May Be Affected | | |
|---|---|---|
| Department of Toxic Substances Control, Department of General Services and California Integrated Waste Management Board | | |
| Committee Recommendation | Committee Chair | Date |
| | | 3-4 |

**BACKGROUND**

AB 2067 is sponsored by Waste Management, Safety-Kleen, Evergreen Environmental Services and Romic Environmental Technologies Corporation. According to the sponsor, the bill is intended to address a variety of issues relating to the handling of hazardous materials. Additionally, this bill is intended to provide for easier reporting to Department of Toxic Substances Control (DTSC) through electronic manifesting, as well as to clarify the definition of used oil. Provisions relating to manifest fee exemptions for clean air solvents are designed to address problems related to new regional air district regulations. The bill also would reenact provisions on State procurement of recycled fluids, paints and solvents and would add recycled building materials to these procurement provisions.

HAZARDOUS WASTE LAW

Disposal of Untreated Hazardous Waste. California's hazardous waste control law prohibits from land disposal any hazardous waste restricted from land disposal pursuant to Federal Resource Conservation and Recovery Act of 1976 (RCRA) or by State law land disposal restrictions. DTSC has adopted regulations to specify standards to which hazardous wastes must be treated prior to land disposal, and which specify other requirements related to notification and record keeping.

STATE AGENCY PROCUREMENT LAW

State Agency Buy Recycled Campaign (SABRC). Current law, which is the basis for SABRC, requires State agencies to procure recycled-content products. The California Integrated Waste Management Board (CIWMB) is mandated to work with both the private and public sectors to encourage the procurement of recycled-content products. The Public Contracts Code requires the CIWMB to "...encourage the use of recycled products to ensure that California's industries have sufficient and adequate markets for products regeneratively utilizing California's solid waste recycled resources."

State Procurement of Recycled Fluid, Paint and Solvent. State agency procurement law relating to acquisition of recycled fluid, paint, and solvent was enacted by Chapter 959, Statutes of 1993 (SB 734, Rosenthal). The language at that time included a 5 percent price preference and a sunset clause for January 1, 1997. Because there was no bill to extend the sunset date, this section is no longer in statute.

**RELATED BILLS**

HAZARDOUS WASTE LAW

SB 1824 (Calderon) would allow the mixing of hazardous wastes with used oil if the recycling process that uses the mixture produces a recycled oil that meets specified minimum standards of purity. SB 1824 was introduced on February 19, 1998. The bill passed the Senate Environmental Quality Committee (9-0) on April 20, 1998 and is set to be heard before the Senate Appropriations

Committee on May 11, 1998. SB 1824 is scheduled to be heard at the May 19, 1998 Legislative and Public Education Committee (LPEC) hearing.

SB 2014 (Schiff) would provide that a generator who pays a hazardous waste generator inspection fee to a certified unified program agency is eligible for a refund of the generator fee, under specified conditions. Additionally the bill would provide that a generator who transfers hazardous materials to an offsite facility for recycling at that offsite facility is eligible for a refund of the generator fee, under specified conditions. SB 2014 was introduced on February 20, 1998. SB 2014 passed the Senate Environmental Quality Committee (9-0) on April 20, 1998 and is scheduled to be heard before the Senate Appropriations Committee on May 11, 1998. Neither LPEC nor the CIWMB have considered this bill.

STATE AGENCY PROCUREMENT LAW

AB 705 (Strom-Martin) would have required, upon the request of a local agency, that any State agency declare to what extent it intends to utilize programs or facilities established by the local agency for the handling, diversion, and disposal of solid waste. If the State agency did not intend to utilize those established programs or facilities, the bill would have required the State agency to identify sufficient disposal capacity for waste that is not source reduced, recycled, or composted. Additionally, AB 705 would have reenacted provisions of law that required all State agencies to purchase certain recycled products if they meet quality and cost considerations. The bill would have included building and construction materials, outdoor furniture, and landscaping materials within the definition of recycled products for purposes of procurement requirements for State agencies. The Governor vetoed AB 705 on October 4, 1997. The CIWMB reviewed AB 705 and could not reach a position on the measure because there were not enough members serving on the Board at that time. Existing law requires the CIWMB to have an affirmative vote of at least four members for the transaction of any business of the Board (Public Resources Code [PRC] §40410).

AB 2605 (Bowen) would enact the Accountability and State Procurement Improvement Act, which is a new statutory scheme for the State's acquisition of goods and services. Among other things, the bill would permit State agencies to contract on their own behalf for goods and information technology. AB 2605 was introduced on February 23, 1998. The bill passed the Assembly Consumer Protection, Governmental Efficiency and Economic Development Committee (10-3) on April 21, 1998 and was referred to the Assembly Appropriations Committee. No hearing date has been scheduled. Neither LPEC nor the CIWMB have considered this bill.

AB 2805 (Assembly Committee on Televising the Assembly and Information Technology) would add provisions related to conflicts of interest and treatment of bid responses to the Public Contracts Code. AB 2805 was introduced on March 13, 1998. The bill passed the Assembly Televising the Assembly and Information Technology Committee (5-0) on April 13, 1998 and was referred to the Assembly Appropriations Committee. No hearing date has been scheduled. Neither LPEC nor the CIWMB have considered this bill.

**EXISTING LAW**

Federal law (Federal Resource Conservation and Recovery Act of 1976 (RCRA:

1. Prohibits from land disposal any hazardous waste restricted from land disposal; and

2. Requires a manifest for shipping hazardous waste materials that fulfills the U.S. Department of Transportation's (U.S. DOT) hazardous material shipping paper requirements, which are intended to provide shipment information to emergency response personnel in the event of an in-transit accident.

State law:

1. Defines "recyclable material" and "recycled material" for purposes of the hazardous waste control laws (Health and Safety Code [HSC] §25121).

2. Requires any person generating hazardous waste that is transported for offsite handling, treatment, storage, disposal, or any combination of these, to complete a hazardous waste manifest prior to the time the waste is transported or offered for transportation and to submit the manifest to the Department of Toxic Substances Control (DTSC) (HSC §25160).

3. Requires DTSC to impose a fee for each manifest used by a generator, but exempts from the fee, after June 30, 1998, manifests used solely for hazardous wastes that are recycled (HSC 25205.15 [c] [3]).

4. Requires, in order to be eligible for payment of a recycling incentive, an industrial generator of used lubricating oil, a used oil collection center, or a curbside collection program, to report to the CIWMB for each quarter the amount of lubricating oil purchased and the amount of used lubricating oil transported to a certified used oil recycling facility, or to a used oil storage facility or to a used oil transfer facility, or that is transported to an out-of-state recycling facility registered with the Environmental Protection Agency (PRC §48670).

5. Prohibits from land disposal in California any hazardous waste restricted from land disposal pursuant to the RCRA, except under certain conditions (HSC §25179.5).

6. Requires generators of hazardous waste to pay an annual fee to the State Board of Equalization, exempting from the fees hazardous materials recycled and used on site, and certain aqueous wastes (HSC §25205.5).

7. Defines "used oil" for purposes of handling, provides specified standards for the purity of recycled oil, including specified amounts of total halogens, such as chlorine or bromine, and prohibits the intentional contamination of used oil with other hazardous waste, except as specified (HSC §25250.1).

8. Declares that it is state policy to conserve and protect resources using recycled resources (Public Contract Code [PCC] §12160.

9. Establishes various recycled product purchase and procurement requirements for State agencies (PCC §s 12150-12320).

**ANALYSIS**

AB 2067 would:

1. Define "recycling" for purposes of the hazardous waste control to mean the process of using, reusing or reclaiming a recyclable material to produce a recycled material. The definition would not include disposal or the placement of hazardous waste in an incinerator.

2. Define "recycling" for purposes of the fees, taxes, and charges imposed pursuant to this chapter as the collecting, transporting, storing, transferring, handling, segregating, processing, using, reusing, and reclaiming of recyclable material to produce recycled material.

3. Allow a generator of hazardous waste and any facility operator that receives hazardous waste to submit an electronic report to DTSC in lieu of the manifest copy.

4. Require DTSC to authorize a transporter or facility operator to implement electronic methods of tracking and reporting for certain shipments of hazardous waste.

5. Exempt, from manifest fees imposed after June 30, 1998, manifests used for hazardous wastes derived from clean air solvents, as defined, except that DTSC would be authorized to impose a fee of not more than $1 on manifests used for clean air solvents if the DTSC determines, by June 30, 1999, that there are unfunded specified costs associated with the processing of these manifests.

6. Allow a hazardous waste facility that meets certain conditions to conduct defined unloading and loading operations pursuant to specific criteria, such as within a secondary containment area, or other area approved by permit or variance.

7. Provide that any land disposal restriction, including any treatment standard, notification requirement, or record-keeping requirement adopted pursuant to RCRA is the minimum treatment standard for that waste.

8. Would require DTSC to submit a report to the Legislature, by June 30, 1999, making recommendations for changes in the structure of the generator fee.

9. Revise the definition of "used oil" to expressly include certain fuel oils, including diesel fuel oil, and other fuel products.

10. Allow a used oil generator that is not a conditionally exempt small quantity generator or a used oil collection center, to determine whether used oil contains more than 1,000 ppm total halogens by either testing the used oil or applying knowledge of the content of the used oil.

11. Require that mixtures of used oil and fuel oil products that are not otherwise hazardous wastes be regulated as used oil.

12. Require that, fitness and quality being equal, all State agencies purchase the following types of recycled products whenever the recycled product is available at a cost no greater than the cost of nonrecycled products:

    a. Building and construction materials, including plastic lumber, concrete and asphalt pavement, insulation and roofing materials;

    b. Outdoor furnishings, including picnic tables, benches, garbage and recycling receptacles, sign posts, parking stops, and playground equipment;

    c. Indoor furnishings, including flooring, carpeting, ceiling tiles, and interior wall systems; and

    d. Landscaping materials including compost, mulch, and soil amendments.

13. Reinstate, until January 1, 2001, requirements that all State agencies purchase rerefined automotive lubricants, recycled antifreeze fluid, recycled solvents, and recycled paints, only when these products are available, of a fitness and quality equal to their nonrecycled counterparts, and whenever the recycled products are available at the same cost or at a lower cost than the total cost of the nonrecycled products;

**COMMENTS**

HAZARDOUS WASTE LAW

**Portions of AB 2067 that Could Possibly Affect CIWMB Programs**

Definitions of Used Oil and Recyled Oil. AB 2067 would provide two separate definitions of "recycling" -- one as a general definition ("the process of using, reusing or reclaiming a recyclable material to produce a recycled material") and one for purposes of fee assessment which includes "collecting, transporting, storing, transferring, handling, segregating, processing, treating, reusing and reclaiming recyclable materials"). The first definition expressly omits disposal (including discharging or dumping to land, air or groundwater) and incineration of the waste. The second definition, for fee purposes, does not expressly omit disposal and incineration.

Fuel Contamination in Used Oil. AB 2067 contains the same language as SB 2014 (Schiff) and SB 1824 (Calderon) as well as additional language concerning the rebuttal presumption on used oil. Existing law allows only de minimus amounts of fuel contamination to meet the used oil definition. As a result, permitted used oil recycling facilities cannot receive the fuel contaminated oil nor can

used oil haulers handle the material as used oil. This has impacted a large number of generators, such as farmers, who have little economical recourse and rely on used oil haulers to take the material. Recyclers claim that they can easily handle fuel contaminated used oil at processing facilities and have advocated a change in the law.

AB 2067 would be beneficial to the CIWMB's Used Oil recycling incentives program making it more economical for farmers and others to properly dispose of waste fuels as used oil, as well as providing some clarification of the rebuttable presumption. The language would bring clarity to an aspect of the rebuttable presumption; consistent with the DTSC's recently adopted regulations.

Land Disposal Restrictions, Notification and Record Keeping Requirements. AB 2067 would provide that any standard adopted or amended by the U.S. Environmental Protection Agency (U.S. EPA) relating to land disposal restrictions, including treatment standards, and notification and record keeping requirements will be the minimum standard in the State and become effective on the date of Federal adoption of the regulation. The sponsors state that this provision provides technical clarifications in that, when originally drafted, "notification requirement" and "record keeping requirement" were implied in the term "treatment standard." This proposed provision would address DTSC's understanding that while "standards" do not, by definition, include "requirements", these requirements were to be included in any State changes that would follow Federal changes.

Electronic Reporting. AB 2067 would allow for the use of electronic reporting in lieu of manifesting for hazardous waste. AB 2067 provides that a bill-of-lading be required to be carried with a shipment of waste if the electronic manifesting method is employed to fulfill transportation requirements (U.S. DOT and the California Highway Patrol). If a business makes the determination to use electronic reporting they are required to utilize a bill-of lading for the shipment being transported.

Current law provides that a manifest or a modified manifest must validate a request for a Used Oil incentive payment. Health and Safety Code §25250.8 defines the necessary information for a document to meet the criteria to be considered a modified manifest. A bill-of-lading meets the defined criteria and has been accepted as a modified manifest for Used Oil incentive claim payment purposes since the inception of the incentive claim program. Thus, there would be no material effect on the incentive claims, as the electronic reports would have a bill-of-lading to file with their incentive claim.

Additionally, the DTSC should be implementing some standards on the type of media that will be acceptable for electronic reporting. Once this is established, the CIWMB may wish to determine if the media is acceptable to the CIWMB software and if this is acceptable in lieu of the paper manifest/bill-of-lading. In the initial Used Oil program audit, the Department of Finance had no findings relative to the use of a bill-of-lading as a modified manifest.

**Portions of AB 2067 that Would Affect Other State Agencies**

Fee Assessment. According to DTSC, the definition of recycling for purposes of fee assessment will cost the department an estimated $4.4 million in lost revenues in the next fiscal year, with unknown

losses thereafter. Chapter 870, Statutes of 1997 (SB 660, Sher) which restructured and simplified the hazardous waste system only went into effect on January 1st of this year. Though it was designed to be revenue neutral, the effects of Chapter 870's reform on DTSC funding and its abilities to further its program activities are still unknown. While Chapter 870 gave a fee break across the board, this bill gives a substantial fee break, as estimated by DTSC, only to a select section of regulated industries. In light of the previous legislative changes and selective fee break, the definitions proposed in AB 2067 may be inappropriate or premature at this time.

Electronic Manifesting. Nearly all shipments of hazardous waste that are transported for offsite handling, treatment, storage or disposal are required to be accompanied by a shipping document called a California Uniform Hazardous Waste manifest (manifest). The manifest is a six-part shipping and waste tracking form that includes U.S. Department of Transportation (U.S. DOT), United States Environmental Protection Agency (U.S. EPA) and State-required information. The manifest requirement was established by the RCRA and the manifest format is strictly determined by Federal regulation. The manifest fulfills U.S. DOT's hazardous material shipping paper requirements, which are intended to provide shipment information to emergency response personnel in the event of an in-transit accident.

California requires the use of a manifest for shipments for all hazardous waste, regardless of whether the waste is RCRA-regulated or non-RCRA regulated. The manifest is a record of information, which includes the type and amount of hazardous waste being transported. State and Federal waste code numbers identify the hazardous wastes. The manifest is also a record of the identity, address and location of the generator of the waste; the identity, address and location of the receiving facility; and the name of the transporter.

The generator and the receiving treatment, storage or disposal facility are required to send copies of the manifest to DTSC, which are processed to place key information regarding the shipment into a computer database. The manifest documents are then microfilmed for long term storage and retrieval. According to DTSC, there are approximately 500,000 hazardous waste shipments per year in California. As a result, DTSC must process approximately 1 million documents each year.

DTSC uses manifest data for tracking, enforcement, policy making, capacity assurance, trend analysis, fee collection and auditing, program planning, budgeting, identification of responsible parties, public and legislative reporting and other purposes. Manifest data is public information and as custodian of the data, DTSC provides access to the public and the regulated community. DTSC also makes manifest data available to support other agencies, including law enforcement agencies, regulator agencies and the Certified Unified Program Agencies (CUPAs) to assist them in their compliance efforts.

Although the information in the computer database is useful for these purposes, the manifest itself (or microfilmed copy) is the actual record of the shipment, and is necessary for evidence of the shipment in legal proceedings. During and after the shipment, the manifest serves as a record of the chain of custody, clearly documenting all parties involved in the shipment by company name and identification number, and by name, date and signature of the person(s) who acknowledged receipt and possession of the shipment.

DTSC, in an attempt to relieve any unnecessary burden on the regulated community (the initiators of the documents), has cooperated with individual waste handlers on pilot projects to explore alternative electronic systems to report manifest information. To date, none of the pilots have been successful at meeting all of the essential functions described above.

Further, DTSC is currently reviewing its existing manifest data tracking system. A feasibility study is due to be completed next year to implement improvement to the system. Electronic submittal of manifest data is an integral component of the study. The U.S. Environmental Protection Agency is also considering electronic hazardous waste tracking mechanisms. In light of these separate and evolving processes, use of electronic reporting, while certainly an efficient and practical goal, may be premature at this time.

AB 2067 would allow generators and treatment, storage or disposal facilities (TSDFs) to submit to DTSC electronic reports, in lieu of the paper manifests, pursuant to a schedule determined by the department. The bill requires that the reports be submitted at least "four times a year." Existing law requires manifests to be submitted to DTSC within 30 days. The language in this bill is unclear as to what time period is required. If "quarterly," the bill extends the submittal time to 90 days. Other interpretations could lead to four submittals at the end of the year. In any event, this bill, without any known rationale for doing so extends the submittal time.

Unrecycled Clean Air Solvents Given Manifest Fee Exemption. According to the Assembly Environmental Quality Committee analysis, this provision is designed to solve a practical problem arising from South Coast Air Quality Management District (Air District) regulations. Currently, companies such as Safety-Kleen provide a petroleum-based solvent sales and recycling service for businesses, such as automotive repair shops, that use them in special cleaning tanks. The recyclers will take the contaminated solvent from the tanks, remove the contaminants, and return the solvent to the end-user. The end-user enjoys a significant reduction in hazardous waste disposal costs as a result of this "milk-run" operation, as the sales and recycling services take responsibility for the disposal of the hazardous waste residue. In order to reduce the amount of volatile organic compounds (VOCs) in the air, the Air District has adopted new regulations that would require the replacement of petroleum-based solvents with certain aqueous solutions. The aqueous solutions cannot be recycled in the same manner as can the petroleum-based solvents, so the sales and recycling services cannot provide the same milk-run services, and accompanying generator waste fee breaks, to the end-users. The result is increased hazardous waste disposal costs for the end-users and possible loss of revenue for the sales and recycling services.

AB 2067 would allow for the clean air solvent to be treated the same as petroleum-based solvents for purposes of milk-run pickups and fee exemptions for the end user. The primary difference between the two substances, however, is their recyclability, or lack thereof. While attempting to address a market problem, this provision would provide a generator fee exemption, previously reserved for recycled products to non-recycled products.

Loading and Unloading Operations Allowed Under Certain Conditions. AB 2067 would allow properly permitted hazardous waste facilities to receive hazardous waste from offsite locations, unless limited by permit. It would allow the facilities to conduct bulk, packaged, or containerized

loading and unloading without permit modification. This would allow the facilities to move waste between tanks and vehicles, containers and vehicles or from vehicle to vehicle. All of these procedures must take place within a secondary containment area, or other area previously authorized by DTSC. The time limit for storage of the wastes in vehicles that are not "permitted units" for storage is limited to ten (10) days. At no time can the total volume of hazardous waste on site, in any container or combination of containers exceed the total volume permitted at the facility. The bill would provide for practical movement and storage of transported wastes, particularly addressing rejected loads, within the permitted facility, utilizing accidental release precautions, without facing delays from seeking permit modification.

While this bill attempts to address a practical issue, concerns have been raised that since the need for loading and unloading rejected loads can be reasonably anticipated, from time to time, as part of regular operating procedures, would it not be better to address these circumstances by permit, on a location-by-location basis, rather than by statute? Further, a statutory definition of loading and unloading may be unnecessarily broad, whereas a more exact scope could be described pursuant to a permit.

Is Diesel Fuel Oil "Used Oil?" AB 2067 would state that the definition of "used oil" includes fuel oils and fuel oil products, including diesel fuel oil with a minimum flashpoint of 100 degrees Fahrenheit. It is unclear whether there is the legal ability to mix diesel with other used oils. Current law defines used oil as "any oil that has been refined from crude oil that has been used..." (Health and Safety Code [HSC] §25250.1(a)(1)(A)). The bill would expressly clarify that diesel oil is oil that has been refined from crude oil, ostensibly meeting this definition.

DTSC has raised concerns that this provision is overly broad in that "fuel oil products" could include solvents and gasoline, rather than being limited to substances chemically similar to oil, such as diesel and kerosene. In 1994, DTSC removed from the statute the phrase "contaminated fuel oil with a flashpoint equal to or greater than 100 degrees Fahrenheit" in order to conform California's used oil definition with the new Federal definition. The term "fuel oil product" could arguably include almost any petrochemical.

Halogen Content. AB 2067 would provide two options for generators to determine whether or not used oil contains more than 1,000 ppm total halogens, such as chlorine or bromine, which may otherwise prevent it from being recycled. Under the bill total halogen content may be determined by testing the used oil, or "applying knowledge" of the halogen content in light of materials or processes being used. "Applying knowledge" about halogen content is an option allowed for RCRA wastes pursuant to Federal regulations (40 CFR 262.11). Existing State law only allows testing for halogen content.

Fuel Oils Mixed With Used Oils. When fuel oils are mixed with used oils, they become contaminated with the impurities contained within the used oils. AB 2067 would clarify that in such a circumstance, these mixtures are regulated as used oils.

DTSC has expressed concern that this provision is worded too broadly. Existing law prohibits the intentional mixing of used oil with other hazardous wastes, other than minimal amounts of vehicle

fuel. The proposed amendment would apparently bar a person from mixing used oil with other hazardous wastes, yet allow such a mixture to be managed as used oil. If the purpose of the amendment is to allow intentional mixing of used oils with fuel oils, this should be expressly stated.

STATE AGENCY PROCUREMENT LAW

**Portions of AB 2067 that Could Possibly Affect CIWMB Programs**

State Agency Recycled Product Purchase Requirement. The requirement that State agencies purchase re-refined and recycled products in lieu of their nonrecycled counterparts is the same language that was included under AB 705, which was vetoed by the Governor. AB 705 would have required not only the purchase of recycled products, but also required that State agencies cooperate with local agencies, at their request, to establish the handling, diversion and disposal of solid waste. The Governor's veto message expressly stated that the State-local cooperation mandate was overly broad and not well defined. However, the veto message did not comment on the recycled product purchase requirement. AB 2067 would reintroduce the non-controversial language of AB 705.

AB 2067 would require all State agencies to purchase recycled products, such as re-refined motor oil, recycled antifreeze and paints, and recycled building materials, such as plastic, lumber, and concrete, if the recycled product is "available," according to State agency specifications; of the same "fitness and quality" as its nonrecycled counterpart; and at a cost that is the same or lower than its nonrecycled counterpart. This provision would sunset January 1, 2001.

The proposed language regarding recycled building materials is very similar to language seen last year in AB 705. At that time, CIWMB staff felt that this section of the bill would adversely effect the SABRC. However, staff now looks upon these provisions as a companion provision to encourage recycled product procurement by State agencies. Some purchases, made as a result of this bill, should it pass, may be included in the SABRC report under existing categories, but as in the case of asphalt pavement and portland cement concrete, some may not.

The reintroduction of the procurement preferences for rerefined automotive lubricants, recycled antifreeze fluids, recycled solvents, and recycled paint, which sunset January 1, 1997, reaffirms the State's leadership by example in the arena of material reuse. This bill, while bringing back the purchase preferences for comparably priced products, does not propose to reinstate the 5% price preference for these product categories. This is consistent with the fact that the price preferences for the other product categories also sunset.

New Materials Added to Program. AB 2067 proposes to revise procurement by State agencies, the Legislature, and contractor certification of materials for State jobs by adding three types of products -- building and construction materials, outdoor furniture, and landscaping materials -- to the present 11 product categories. The newly proposed categories are based on use of the product rather than material type. However, these newly proposed categories are viewed as purchase specific preferences to those products already identified in the Public Contracts Code and do not conflict with the SABRC categories.

Purchase of Recycled Products. AB 2067 would require the purchase of specified recycled products instead of non-recycled products, "whenever the recycled product is available at a cost not greater than the cost of nonrecycled products." It may be beneficial if the bill read, "whenever the recycled product is available at a total lifecycle cost not greater than the total lifecycle cost of nonrecycled products." This language allows life cycle factors to be considered in the price analysis such as maintenance, replacement, and labor to be factored into the comparisons.

New Category Conflicts with Current Law. The building and construction materials product category lists concrete and asphalt pavement as examples of products included in the category. However, under current law, PCC §12158 excludes asphalt and portland cement concrete from the requirements of the Chapter.

No Definition for Product Categories. AB 2067 does not provide definitions of the product categories. While it does provide some examples of products considered within each category, it would be helpful to have some type of general description of the four product categories.

Minimum Content Requirements. The proposed new categories do not provide minimum content requirements specific to the categories. It may become difficult to evaluate multiple recycled products with different recycled contents. It may be helpful to identify a minimum recycled content requirement for each category so that there is at least a threshold to qualify as a recycled product. Beyond the minimum content, all evaluations and comparisons would be focused on other aspects of the products such as specifications, availability, performance, and test results.

## SUGGESTED AMENDMENT

The LPEC may wish to consider the following amendments:

1. Allow life cycle factors to be considered in the price analysis such as maintenance, replacement, and labor to be factored into the comparisons between recycled instead of non-recycled products;

2. Correct the conflict regarding asphalt and portland cement concrete under .PCC §12158; and

3. Provide definitions of the product categories.

## LEGISLATIVE HISTORY

AB 2067 was introduced on February 18, 1998. The bill passed the Assembly Environmental Safety and Toxic Materials Committee (5-1) on March 24, 1998. The bill is set to be heard before the Assembly Appropriations Committee on May 13, 1998.

Support: Waste Management (Sponsor)
Safety-Kleen (Sponsor)
Evergreen Environmental Services (Sponsor)
Romic Environmental Technologies Corporation (Sponsor)

Support (Continued) American Electronics Association
California Waste Association
California Oil Change Association

Opposition: California Association of Professional Scientists
Planning and Conservation League
Sierra Club

**FISCAL AND ECONOMIC IMPACT**

AB 2067 would have minimal fiscal impact on the CIWMB.

There would be no problem processing the Used Oil incentive claim payments. Currently, businesses submit a paper manifest to Accounting that supports their oil claim. Programs concern was that the electronically filed manifest submitted to DTSC would only be followed up with a bill-of-lading, and not meet our requirements of paying claims from a validated manifest. However, HSC § 25250.8 defines the necessary criteria for an acceptable manifest. A bill-of-lading meets these criteria, and in fact, has been used for incentive claim payment purposes since the beginning of the program. Because a bill-of-lading will be required to be carried with shipment of waste if the electronic manifesting method is employed, our paper manifest needs will be met upon submission of the bill-of-lading to the Accounting Office.

DTSC will develop the standards for the acceptance of the electronic manifests. If the CIWMB's software is adaptable to whatever DTSC develops, which is more than likely, we will be sharing this data. But it is not critical that our systems link this data in order to process the used oil incentive claims, since we will be using the bill-of-lading as the acceptable paper manifest.

The procurement requirements to purchase recycled products as outlined in AB 2067 will not add a major workload to the CIWMB. The procurement system already allows for the purchase of recycled materials. Requested bid products would be specified to meet the bill's requirements. CIWMB staff state that there are no impacts to the SABRC, and the reintroduction to a "purchase" preference (which was a 5 percent "price" preference; expired January 1, 1997) can be easily absorbed into normal program activities.

LEGISLATION AND PUBLIC EDUCATION COMMITTEE

BILL ANALYSIS

| Board | Author | Bill Number |
|---|---|---|
| California Integrated Waste Management Board | Wayne | AB 2521 |
| Sponsor | Related Bills | Date Amended |
| California Association of Environmental Health Administrators | | April 13, 1998 |

**BILL SUMMARY**

AB 2521 would extend, as specified, the term of service for a member of an independent hearing panel, which hears grievances regarding solid waste facility operations. Additionally, the bill would increase the maximum aggregate civil penalties for violations of solid waste facility regulations from $15,000 to $50,000 per calendar year.

**BACKGROUND**

According to the sponsor, the California Association of Environmental Health Administrators, AB 2521 is a simple, but necessary, measure that makes the local permitting and enforcement process for solid waste management more effective and more efficient.

Local Enforcement Agencies (LEAs). The Integrated Waste Management Act, Chapter 1095, Statutes of 1989 (AB 939, Sher) allows the California Integrated Waste Management Board (CIWMB) to designate cities and counties as LEAs. Cities and counties, through their LEA designation, essentially serve as CIWMB's "enforcement arm" through on-site inspections to enforce State law and conditions placed on the operation of solid waste facilities by the CIWMB and/or an LEA. LEAs can also impose permit conditions, regulations and requirements on facilities operating within their jurisdiction.

**EXISTING LAW**

State law:

1. Allows a solid waste facility operator to request that an LEA hold a hearing if the operator disputes any enforcement action LEA has taken (Public Resources Code [PRC] §s44300-44310);

| Departments That May Be Affected | | |
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| California Integrated Waste Management Board | | |
| Committee Recommendation | Committee Chair | Date |
| | | 3-17 |

2. Requires all LEA hearings to be conducted by a hearing panel consisting of three members appointed according to one of the two following procedures:

   a. In cases where the local government does not operate a solid waste facility in the jurisdiction, LEA's governing body (either a county board of supervisors or city council) may appoint three of its own members to serve as the hearing panel; or

   b. In cases where the local government does operate a solid waste facility in the jurisdiction, the chairperson of the governing body must appoint an independent hearing panel of three members each with a term of two years, but not more than two consecutive terms (PRC §44308);

3. Establishes a $5,000 civil penalty limit for each day of violation of State law or LEA regulation regarding solid waste facilities, with an aggregate limit of $15,000 per calendar year (PRC §45011); and

4. Prohibits any funds collected through civil penalties from being deposited into the General Fund of that LEA (PRC §45010 [b]);

5. Requires any funds collected through civil penalties to be deposited in a segregated account and used exclusively for the purpose of bringing a solid waste facility into compliance (PRC §45010 [b]).

**ANALYSIS**

AB 2521 would:

1. Allow an independent hearing panel member to be reappointed following the completion of two consecutive two-year terms; and

2. Increase the maximum aggregate penalty that can be imposed for violations of State law or local enforcement agency (LEA) regulations regarding solid waste facilities from $15,000 to $50,000 per calendar year.

**COMMENTS**

Civil Penalties. Administrative penalties were added with the passage of Chapter 952, Statutes of 1995 (AB 59, Sher). LEAs have rarely imposed administrative penalties on an operator due to the relatively small penalty amounts available. Civil penalties, which can be assessed through the court system, allow up to $10,000 a day with no maximum.

Current law establishes a civil penalty of $5,000 for each day a solid waste facility has not achieved compliance with State law or LEA regulations or permit conditions. Current law caps the civil penalty at $15,000 (or the equivalent of three days of noncompliance). LEAs impose these penalties, except in the few jurisdictions where the CIWMB is the Enforcement Agency. Prior to levying the civil penalty, an LEA must complete a series of procedures," including

notifying the solid waste facility operator of the violation, meeting with the solid waste facility operator, and considering alternatives to the imposition of a civil penalty that would achieve a comparable result.

AB 2521 would change the maximum civil penalty an LEA may impose from $15,000 per calendar year to $50,000 per calendar year. There is no additional work required to impose penalties of $50,000 than to impose penalties of $15,000 per calendar year.

According to the sponsor, an increase in civil penalties is necessary to provide an effective enforcement tool for the LEAs. Sponsors contend that the maximum penalty of $15,000 per calendar year (or three days at $5,000 per day) is not large enough to stop operators from violating the law. Over the past two years several LEAs (including San Joaquin, San Bernardino and Orange Counties) have had their permit compliance efforts hampered or delayed because of low administrative civil penalties. They contend that ineffective administrative civil penalties drive LEAs to seek enforcement through the court, and such low penalties may also dissuade district attorneys from taking these cases--resulting in poor enforcement of California's solid waste laws.

LEAs need effective tools to allow them to enforce solid waste laws and regulations. Civil penalties are an effective tool if they are large enough to affect an operator. Further, it could cost more than $15,000 in administrative costs for the LEA to hold the necessary hearings, and pay an Administrative Law Judge, to levy the civil penalty. The sponsor believes that the $50,000 per calendar year maximum will help provide a viable tool. However, we note that this change will have no impact on CIWMB policies or programs.

Current law prohibits an LEA from depositing any funds collected through civil penalties into their General Fund. Instead the law requires an LEA to deposit these funds into a segregated account, which is to be used exclusively for the purpose of bringing a solid waste facility into compliance.

Hearing Panels. Current law allows a solid waste facility operator to request a hearing before a hearing panel regarding any enforcement action taken by an LEA against a solid waste facility or in cases where the facility operator believes the permit conditions governing the facility are inappropriate. The hearing panel must either be an LEA governing board or an independent hearing board. Independent hearing board members are limited by current law to serving two two-year terms (cumulative four years). The hearing panels were established to deal with complex local and State permitting and enforcement issues.

Hearing Panel Term Limits. AB 2521 would delete the four-year term limit on independent panel members, thus allowing more continuity in panel membership and giving panel members more opportunities to actually participate in a hearing. According to the sponsor, these panels do not meet frequently. As a result, it would not be uncommon for a panel member's term to expire before he or she serves on a panel that participates in a hearing. The sponsor believes that allowing independent members to serve longer periods of time would provide greater continuity and reduce administrative costs to local government agencies.

## LEGISLATIVE HISTORY

AB 2521 was introduced on February 20, 1998. The bill passed the Assembly Natural Resources Committee (7-2) on April 13, 1998 and passed the Assembly Appropriations Committee (12-8) on April 22, 1998. The bill is currently awaiting vote on the Assembly Floor.

Support: California Association of Environmental Health Administrators (sponsor)
Butte County

Oppose: None on file.

## FISCAL AND ECONOMIC IMPACT

This bill has no fiscal impact on the CIWMB programs and policies. The bill would not require additional staff or staff work.

AB 2531 would increase the annual penalties that can be imposed on a solid waste facility in violation from $15,000 annually to $50,000 annually. The ability to impose this penalty at the $15,000 per calendar year was already in effect.

To date the CIWMB has not imposed any of the penalties upon a solid waste facility. To the CIWMB's knowledge the only local jurisdiction that imposed the penalty was Placer County and the operator was the County of Public Works. The penalties collected by the Placer County were approximately $11,000. As noted previously in this analysis, current law requires an LEA to deposit these funds into a segregated account, which is to be used exclusively for the purpose of bringing a solid waste facility into compliance.

There could be potential minor penalty revenue increases to both the Integrated Waste Management Account and LEA funds.

LEGISLATION AND PUBLIC EDUCATION COMMITTEE

BILL ANALYSIS

| Board | Author | Bill Number |
|---|---|---|
| California Integrated Waste Management Board | Calderon | SB 1824 |
| Sponsor | Related Bills | Date Amended |
| DeMenno/Kerdoon | AB 2067 (Cunneen), SB 988 (Sher), SB 1175 (Sher) | April 28, 1998 |

**BILL SUMMARY**

SB 1824 would allow the mixing of hazardous wastes with used oil if the recycling process that uses the mixture produces recycled oil that meets specified minimum standards of purity.

**BACKGROUND**

SB 1824 is sponsored by DeMeeno/Kerdoon, a used oil recycler located in Southern California. The intent of the bill is to allow the mixing of used oil with other materials i.e., petroleum contaminated water or solvents of various types, if these other materials can be re-refined into used oil. Given the current definition of recycled oil, oil produced only from used oil, and the prohibition against mixing used oil with other hazardous wastes, it is not clear that even mixing used oil with other materials at the used oil refinery is permissible.

The Department of Toxic Substances Control (DTSC) recently made a finding that used oil containing significant amounts of gasoline and diesel fuel cannot be considered as used oil and must be handled as hazardous waste. As a result, the permitted used oil recycling facilities cannot receive or process fuel contaminated oil nor can used oil haulers handle the material as used oil. The finding has impacted generators such as farmers who have little economical recourse and rely on used oil haulers to take the material. Oil recyclers claim that they properly handle fuel contaminated used oil at processing facilities and have advocated a change in the law. It appears that the bill gives relief to generators of fuel contaminated used oils as well as processors.

| Departments That May Be Affected | | |
|---|---|---|
| Department of Toxic Substances Control | | |
| Committee Recommendation | Committee Chair | Date |
| | | 3-21 |

According to the sponsor, improperly managed used motor oil accounts for more than 40% of the total oil pollution of our nation's harbors and waterways. The best way to prevent this pollution is to ensure that used oil is collected and recycled and re-refined into new product. This is possible only if there is a healthy market for used oil. Fortunately, California has a strong used oil recycling and re-refining industry.

**RELATED BILLS**

AB 2067 (Cunneen) is actually two bills in one -- one part deals with hazardous waste control laws and the other part deals with State agency procurement of recycled materials. The hazardous waste portion of the bill relates to SB 1824. AB 2067 would amend the hazardous waste control laws to define recycling; allow electronic manifesting of wastes, allow loading and unloading operations at certain facilities, to modify land disposal standards, clarify the definition of used oil; allow for the mixing of used and fuel oils, and exempt from manifest fees those manifests used for shipping hazardous wastes created by the use of clean air solvents, as defined. AB 2067 passed the Assembly Environmental Safety and Toxic Materials Committee (5-1) on March 24, 1998. The bill is set to be heard before the Assembly Appropriations Committee on May 13, 1998. AB 2067 is scheduled to be heard by the Legislation and Public Education Committee (LPEC) on the May 19, 1998.

SB 988 (Sher) would repeal the Used Oil Recycling Act and the Used Oil Collection Demonstration Grant Program of 1990 administered by the CIWMB. Additionally, the bill would enact certain provisions of the Used Oil Recycling Act as part of the California Oil Recycling Enhancement Act, including provisions that would, among other things, require the CIWMB to: (1) coordinate activities and functions with all other State agencies in information gathering; (2) encourage the purchase of recycled oil products; and (3) encourage the procurement of re-refined automotive and industrial oils for all State and local uses. SB 988 was referred to the Assembly Natural Resources Committee in June of 1997, with no hearing date set. The CIWMB has not taken a position on SB 988.

SB 1175 (Sher) would require the purchaser of lubricating oil that is exempt from the $0.16 per gallon amount to give the seller of that oil an exemption certificate declaring that the oil is intended for use in a manner that makes the oil exempt from the fee. SB 1175 was put on the Assembly Inactive File in September 1997. The CIWMB took a support position on SB 1175.

**EXISTING LAW**

State law:

1. Establishes the California Oil Recycling Enhancement Act, which requires the CIWMB to adopt a used oil recycling program to promote and develop alternatives to the illegal disposal of used oil (PRC §48600, et seq.).

2. Funds the Used Oil Recycling Program with fees paid to the CIWMB by every oil manufacturer at a rate of $0.04 per quart or $0.16 per gallon for every quart or gallon of lubricating oil sold or transferred in the State, or imported into the State for use in California (PRC §48650).

3. Requires the CIWMB to pay a recycling incentive to every industrial generator, curbside collection program, and certified used oil collection center, for used lubricating oil collected from the public, or generated by the certified used oil collection center or the industrial generator, and transported by a used oil hauler to a used oil recycling center, a used oil storage or transfer facility, or an out-of-state recycling facility registered with the federal Environmental Protection Agency. (PRC §48651). The recycling incentive fee is $0.04 cents per quart.

4. Requires that used oil be regulated and managed as a hazardous waste until such time as it has been processed into recycled oil. (Health & Safety Code §25250.1)

5. Prohibits the intentional contamination of used oil with other hazardous wastes, other than minimal amounts of vehicle fuel. (HSC §25250.1)

6. Defines recycled oil as oil that has been processed from used oil so that it meets specified standards of purity. (HSC §25250.1)

7. States that no person who generates, stores, or transfers used oil shall intentionally contaminate used oil with other hazardous waste, other than minimal amounts of vehicle fuel. (HSC §25250.7)

8. Establishes standards of purity for recycled oil. (HSC §25250.1)

**ANALYSIS**

SB 1824 would:

1. Alter the definition of recycled oil by providing that it is oil that has been processed at a used oil recycling facility, that is processed from used oil or from used oil mixed with a hazardous waste and that it meets specified standards of purity.

2. Allow the mixing of used oil with other hazardous wastes under the following circumstances:

   a. The generator or transporter of the used oil mixes it with a contaminated petroleum product. In such cases, the mixture must be managed as a hazardous waste if it is hazardous under federal regulations, it must be transported to a used oil recycling facility, and the process by which it is recycled must result in the production of recycled oil.

b. The used oil recycler mixes used oil with hazardous wastes at the recycling facility. Under these circumstances, any hazardous waste may be mixed with used oil except for a category of federal hazardous wastes known as "listed wastes." The facility must manage the mixture as a hazardous waste if it is hazardous under federal regulations, may process the mixture only in ways specifically authorized by the DTSC and that process must result in the production of used oil.

**COMMENTS**

Used oil and recycled oil. Used oil and recycled oil are broad concepts in the hazardous waste laws. The terms include more than the types of heavy lubricating oils used in engines, transmissions, bearings, and cutting machines. They also include any petroleum product with a flashpoint above 100 degrees F., i.e., materials like diesel fuel, kerosene and some industrial solvents. Some used oil recyclers process contaminated diesel fuel, kerosene and other wastes into bunker fuels used in shipping. This bill would allow the mixing of hazardous wastes with used oil if the recycling process that uses the mixture produces recycled oil that meets specified minimum standards of purity.

Military bases. According to DTSC, the two major oil recyclers in California, DeMeeno/Kerdoon and Evergreen Oil, have major contracts with military bases and want to allow the bases to mix used oil with other petroleum-based products. However, if this bill is enacted into law, it still should have no appreciable fiscal effect on the California Used Oil Recycling Fund. This is because the oil manufacturers have not passed on, to the military, the fee they are required to pay to the CIWMB ($0.04 per quart or $0.16 per gallon) and therefore, the military is not eligible for the recycling incentive.

DTSC concerns. DTSC is still negotiating with the sponsors on amendments because the definition of "recycled oil" in SB 1824 includes "oil that has been mixed with one or more contaminated petroleum products *or hazardous wastes*, other than wastes listed as hazardous under the federal act..." DTSC is concerned that "opening the door" to other hazardous wastes would be potentially dangerous.

CIWMB used oil program. The CIWMB's Used Oil Program is designed to help Californians who change their own motor oil properly dispose of the oil so it can be collected and re-refined into oil that meets or exceeds all manufacturers' quality standards. During 1996, the program approved 754 new certified collection centers at gas stations, auto parts stores, and other locations, bringing the total to more than 2,100. This is up from fewer than 300 when the program began. Californians who bring in their used oil receive an incentive payment of $0.04 cents per quart. Payments in fiscal year 1995-96 totaled $1.8 million.

The program also awarded $18.9 million in grants to cities, counties, nonprofit organizations, and the Coastal Commission to fund a variety of used oil collection and education efforts. The increased number of collection centers and the heightened public awareness are having an impact; however, too much oil is still being improperly disposed of. During 1996, 57 million

gallons of lubricating oil were properly disposed of, but approximately 25 million gallons were unaccounted for and 80% of that amount was from individuals changing their own oil. Although not all used oil dumped into the trash or dumped on a field reaches a stream, lake, or groundwater; just one gallon of oil can contaminate 1 million gallons of water.

**SUGGESTED AMENDMENT**

The reference to "paragraph (3) of subdivision (a) of Section 25250.1 of the Health and Safety Code" in Public Resources Code §48620 could be made more generic rather than having to change the PRC again if subsequent subparagraph numbering changes to the HSC are made. This would be consistent with recommendations made in 1997 for other PRC sections which refer to HSC sections in SB 988 (Sher).

48620. "Recycled oil" means recycled oil, as defined in ~~paragraph (3) of subdivision (a) of~~ Section 25250.1 of the Health and Safety Code.

**LEGISLATIVE HISTORY**

SB 1824 was introduced on February 19, 1998. It passed the Senate Environmental Quality Committee (9-0) on April 20, 1998 and is scheduled to be heard by the Senate Appropriations Committee on May 11, 1998.

Support: DeMenno/Kerdoon (sponsor)
Safety-Kleen Corp.

Oppose: California Council for Environmental and Economic Balance (CEEB)

**FISCAL AND ECONOMIC IMPACT**

SB 1824 would likely have no fiscal impact on the CIWMB. The amount of processed mixed waste/used oil being transported and the number of new claim payments, even though difficult to measure, should be immaterial.

LEGISLATION AND PUBLIC EDUCATION COMMITTEE

BILL ANALYSIS

| Board | Author | Bill Number |
|---|---|---|
| California Integrated Waste Management Board | Haynes | SB 2103 |
| **Sponsor** | **Related Bills** | **Date Amended** |
| BKK Corporation | AB 1128 (Miller) | April 30, 1998 |

## BILL SUMMARY

SB 2103 would prohibit the purchaser or lessee of, or successor to, the City of West Covina's water utility from prohibiting, taxing, or otherwise restricting the importation, conveyance, or sale by a retail water supplier of recycled or nonpotable water to, or the use of recycled water by, a closed hazardous waste and solid waste facility, within the boundaries of the City of West Covina for the purpose of irrigation or dust suppression or any other nonpotable use at that facility that is approved by the State Department of Health Services or the Los Angeles Water Quality Control Board.

## BACKGROUND

This legislation is sponsored by the BKK Corporation (BKK) which is currently conducting closure and post-closure activities at two landfill sites (one Class I and one Class III) in the City of West Covina. Both sites will be capped, covered with earth and seeded with vegetation. One of the sites will ultimately be converted to a municipal golf course. Closure and post-closure activities at the landfill sites will require a minimum of 202 million gallons (620 acre-feet) of water annually. BKK currently has only potable water available for these closure activities and desires to purchase less-expensive, recycled water for its closure and post-closure activities at these sites.

The City of West Covina is currently not a provider of recycled water and, according to the BKK, has for many years declined to become a recycled water provider due to the high cost of constructing a new infrastructure to provide recycled water to the landfill sites. The City is now in the process of selling its retail water utility. BKK asserts that recycled water is readily available to the landfills from the Los Angeles County Sanitation Districts, but the City has refused BKK's request to import recycled water, forcing BKK to purchase expensive potable domestic water for the closure and post-closure activities at the landfills. BKK indicates that the recycled water (tertiary treated) has been approved for nonpotable uses at the landfills by the Department of Health Services and the Los Angeles Regional Water Quality Control Board.

| Departments That May Be Affected | | |
|---|---|---|
| California Integrated Waste Management Board, Department of Toxic Substances Control, State Water Resources Control Board | | |
| **Committee Recommendation** | **Committee Chair** | **Date** |
| | | 3-26 |

**RELATED BILLS**

Chapter 521, Statutes of 1997 (AB 1128, Miller) allows the City of West Covina to sell its water utility if a majority of the utility's customers that live within the City approve the sale in a mail ballot election. This bill sunsets January 1, 2001.

**EXISTING LAW**

California Constitution:

1. Mandates that the State's water resources be, to the fullest extent possible, managed so that it is put to the most beneficial use and that its waste and unreasonable use be prevented (California Constitution, Article X, §2).

State law:

1. Authorizes the City of West Covina to sell the water utility in accordance with specified provisions (Public Utilities Code §10061.3)

2. Finds and declares that the use of potable domestic water for nonpotable uses, including, but not limited to, cemeteries, golf courses, parks, highway landscaped areas, and industrial and irrigation uses, is a waste of or an unreasonable use of the water within the meaning of Section 2 of Article X of the California Constitution if recycled water is available subject to the following specified conditions [Water Code § 13550 (a)].

   - The source of recycled water is of adequate quality for these uses and is available for these uses [Water Code § 13550(a)(1)];

   - The recycled water may be furnished for these uses at a reasonable cost to the user [Water Code § 13550(a)(2)];

   - After concurrence with the State Department of Health Services, the use of recycled water from the proposed source will not be detrimental to public health [Water Code §13550(a)(3)];

   - The use of recycled water for these uses will not adversely affect downstream water rights, will not degrade water quality, and is determined not to be injurious to plant life, fish, and wildlife [Water Code § 13550(a)(4)].

3. States that in making the determination pursuant to subdivision (a), the state board shall consider the impact of the cost and quality of the nonpotable water on each individual user [Water Code § 13550(b)]

4. Prescribes that a person or public agency, including a State agency, city, county, city and county, district or any other political subdivision of the State, shall not use water from any source of quality suitable for potable or domestic use for nonpotable uses, including cemeteries, golf courses, parks, highway landscaped areas, and industrial and irrigation uses if suitable recycled water is available as

provided in § 13550; however, any use of recycled water in lieu of water suitable for potable domestic use shall, to the extent of the recycled water so used, be deemed to constitute a reasonable beneficial use of that water and the use of recycled water shall not cause any loss or diminution of any existing water right (Water Code § 13551).

**ANALYSIS**

SB 2103 would:

1. Prohibit the purchaser or lessee of, or successor to, the water utility of the City of West Covina from prohibiting, taxing, or otherwise restricting the importation, conveyance, or sale by a retail water supplier of recycled or nonpotable water to, or the use of recycled water or nonpotable water by, a closed hazardous waste and solid waste facility within the boundaries of the City of West Covina. These prohibitions would extend to purposes such as irrigation, or dust suppression or any other nonpotable use that is approved by the State Department of Health Services or the Los Angeles Water Quality Control Board, as applicable.

**COMMENTS**

Health and Safety and the Environment. The CIWMB does not regulate the use of recycled water. The State Department of Health Services is responsible for determining if the use of the recycled (tertiary treated) or nonpotable water meets the health and safety requirements in accordance with the State laws and regulations. In addition, the Los Angeles Regional Water Quality Control Board is responsible for determining if the use of recycled or nonpotable reclaimed water for irrigation, dust suppression or any other nonpotable use is appropriate to protect the integrity of the closed landfill sites as well as to protect the quality of the waters of the State.

Impact on Closure and Post-Closure Activities. The CIWMB receives a closure and post-closure maintenance plan for each solid waste landfill in California. The plan specifies the method of closure as well as any post-closure activities. The BKK Class III landfill is currently undergoing partial final closure. Complete final closure plans have been technically approved with full approval to occur upon completion of the CEQA process by the City of West Covina. The partial closure plan addresses construction activities through the year 1999 while the complete final closure plan addresses post-closure land use changes.

One important aspect of planning for and complying with the closure and post-closure maintenance plan for any solid waste landfill is the establishment and maintenance of the vegetation on the site. Improperly planted or maintained vegetation could result in violations of a closure plan. One of the most important factors in controlling dust at a landfill during the closure process, as well as to help support and maintain vegetation over the post-closure maintenance period, is the provision of a reliable source of water. In addition, State law pursuant to Water Code § 13550 et seq. acknowledges that the use of potable domestic water when recycled water is available for nondomestic uses is a waste or an unreasonable use of the water. It is our understanding that several sources of recycled water are available for BKK to consider in the closure and post-closure maintenance activities at the landfill. These sources include the existing potable water provided by the City of West Covina, treated effluent from their on-site water treatment plant that has been permitted by the Los Angeles Regional Water Quality Control Board for use on-site, as well as recycled water from the City of Industry and tertiary

treated effluent from the nearby San Jose Wastewater Treatment Plant, operated by the Los Angeles Sanitation Districts.

## LEGISLATIVE HISTORY

SB 2103 was introduced on February 20, 1998 and was referred to the Senate Agriculture and Water Resources Committee. It was amended on April 30, 1998. A hearing was held on May 5, 1998 and reconsideration was granted. A hearing on this bill is scheduled for May 11, 1998 in the Senate Agriculture and Water Resources Committee and in the Senate Energy, Utilities and Commerce Committee on May 12, 1998.

| | |
|---|---|
| Support: | BKK Corporation (sponsor)<br>Waste Management<br>Browning-Ferris Industries<br>Californians Against Waste<br>Sierra Club<br>Planning and Conservation League |
| Oppose: | California Water Association<br>Association of California Water Agencies |
| Neutral: | WateReuse Association |

## FISCAL AND ECONOMIC IMPACT

SB 1924 would have no direct fiscal impact on the CIWMB or its programs. The use of recycled water in lieu of potable water at the two landfills undergoing closure and post-closure activities is not under the authority of the CIWMB. The Department of Toxic Substances Control is responsible for evaluating the health impacts of the use of such water, and the Los Angeles Regional Water Quality Control Board is responsible for assessing the environmental impacts of the use of recycled water in lieu of potable water for these landfills. According to BKK Corporation, a supply of less-expensive, recycled water is available for purchase from the Los Angeles County Sanitation Districts. If BKK is allowed to use the recycled water, cost savings should be realized for the closure and post-closure maintenance activities for the two landfills.